The Searchlight

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Rezoning the City of New York

A Report on the Harrison, Ballard and Allen "Plan for Rezoning of the City of New York," by the Sub-Committee on Zoning of the Citizens Union Committee on City Planning

During the year that has passed since the city's consultants, Harrison, Ballard and Allen, submitted their "Plan for Rezoning of the City of New York" to the City Planning Commission, the Citizens Union has given it careful study in keeping with its momentous importance. We now offer this report for public discussion in preparation for the public hearings that should soon be scheduled by the Planning Commission.

The Citizens Union supports the general principles of the "Plan for Rezoning." If adopted with appropriate modifications it will constitute, in our judgment, one of the most important improvements ever made in the government of New York City.

This statement is made after detailed consideration of the present Zoning Resolution and of its proposed substitute. This sub-committee analyzed the present Resolution section by section and prepared a long series of "Zoning Recommendations of the Citizens Union" published two years ago. That report was carefully considered by the city's consultants along with a vast amount of other revelant material. We are gratified that most of our major recommendations and many minor ones have been included in the consultants' proposal, besides many other improvements.

The "Plan for Rezoning" is a workmanlike product, adequately documented, well worthy of the city's investment in money, time and attention. Now, while emergency controls have put a stop to most building, is the best time to perfect and adopt it. By replacing the present outworn patchwork Resolution, it will meet one of the city's greatest needs.

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Introduction

The proposed Zoning Resolution consists of two main parts:

(1) the text of the Resolution and

(2) the maps.

The Citizens Union recommends that hearings be first held on the text, so that the fundamental change in approach be not jeopardized by argument on the details of its application. Later, hearings on the maps should be held throughout the city, in the communities affected.

This report is largely concerned with the text of the proposed Resolution. The mapping is primarily a matter of individual and local interest.

We have considered the wisdom rather than the legality of the Plan. If the proposals are in the public interest, any enabling legislation needed can be enacted. We have noted some points at which legislation will undoubtedly be needed. If the City Planning Commission has not already done so it should ask the Corporation Counsel to draft appropriate bills. This need not delay the hearings on the Plan itself.

In this report we wish to emphasize the proposed innovations and improvements which should be kept in the final draft of the rezoning. We also recommend certain changes which will make the plan even more useful.

Our report will include short descriptions of the salient features of the Plan, but its main purpose is evaluation. To those who would like a brief illustrated exposition of the main principles we recommend "A Review of the Proposals for Rezoning New York City" published by the New York Chapter of the American Institute of Architects, 115 E. 40th Street, New York 16, N. Y.

Not every member of the sub-committee concurs in every recommendation of this Report but all recommend it as a basis for serious consideration by the City Planning Commission, the Board of Estimate and the interested public.

General Approach

Single Set of Districts. The single set of 38 types of zoning districts for the whole city, replacing the present triple array of use, height and area districts with its possible 864 and actual 184 different combinations of district regulations, constitutes a major gain. This simplification was first recommended by the Mayor's Committee on City Planning as far back as 1936 and urged again by the Citizens Union in 1949. It has been accomplished without serious loss, and with many gains, in present protections.

Use Zoning

Separation of Residences from Heavy Industry. The proposed prohibition of future residences in heavy manufacturing districts is desirable from two points of view. It protects future homes from the noise, dust, smoke, fumes, odors and danger of heavy industry. It also preserves for heavy industry the locations best suited to it. This makes it possible to allot a smaller area than would otherwise be necessary for purposes essential to the industrial life of the city but incompatible with residential use. In line with this restriction on future residences is a prohibition of the two most objectionable groups of heavy industry within 100 feet of a residence or residence retail district even within a district where they would otherwise be permitted (section 1321). The requirement of section 874, that all heavy industry now existing in areas zoned for residence be discontinued after an amortization period of 30 years, will complete the desirable separation except for existing residences outside residence districts.

Segregation of Nuisances. A substantial part of the city is now unrestricted as to use, which means that in any part of this large area a coal yard, an oil refinery or a glue factory may at any time turn up as a close neighbor to residences or high-class stores and offices. There are no unrestricted areas under the proposed Resolution and these most objectionable though

necessary uses, with others in the same category, are restricted to a much smaller area (MD districts) than heavy industry in general.

Shopping Centers. Especially commendable is the breakup of the long ribbons zoned for stores far in excess of actual needs and the substitution of compact shopping centers throughout the city. The rezoning for residence of those parts of the ribbons which have not been much used for anything else and have not already been blighted by scattered shops, and the discouragement of further stores, through the restrictions of the new RRB districts, in other parts of the ribbons, should do a reasonably good job of reclamation for residence use.

Larger Area for Residence. Because the rezoning restricts other uses much more nearly to the areas actually needed for them and keeps residences out of some such areas, it is able to reserve for residence and closely associated uses a much larger part of the city than at present. This means that many more people will be able to live in protected neighborhoods.

Wide Mapping of Local Retail. The rezoning also reserves much more area—about 300 times as much as at present—for "local retail" or "residence retail" uses, with stores permitted only on the ground floor in structures otherwise restricted to residence. Most of the new shopping centers are so zoned, in RRC and the occasional more restricted RRA districts, and they are scattered so widely throughout the residence districts that nearly everyone will be able to walk easily to a place where he does his everyday shopping. This will greatly enhance the convenience of metropolitan living without altering the essential character of residential neighborhoods.

Nonconforming Uses. We strongly approve the proposed establishment of the principle that certain nonconforming uses may be prohibited after a reasonable period for amortization of investment. This was one of the recommendations in our 1949 report. The most important application of this principle, the eventual removal of all heavy industry from residential districts, has already been mentioned. The rezoning plan also limits to three years the further nonconforming use of unimproved land in residence districts (section 871), of buildings with an assessed valuation under $500 in residence districts (section 872) and of signs in residence districts and projecting and flashing signs in residence retail districts (sections 872 and 873). The plan also follows our recommendation that a building damaged or destroyed to the extent of half its value may not be restored or put in operation for a non-conforming use (section 840). In general the plan follows the present rules for continuance, alteration and changes of non-conforming buildings and uses, but it does allow changes to certain less objectionable nonconforming uses instead of confining nonconforming uses to those already existing (sections 820-862).

Signs. We are glad that the sign provisions of the rezoning plan, both as to accessory business signs and as to outdoor advertising (article 12 and sections 872, 873 and 1420-1420.30), protect the amenities somewhat better than those of the present Resolution. Particularly gratifying are the elimination of non-conforming signs just referred to, the limitations on height, and the extra protections provided for arterial highways (section 1420.10) and public parks (section 1420.20).

Changes Recommended. In general we favor the use zoning proposals, which establish 15 types of use districts, with subdivisions based on bulk, but we make the following specific recommendations for considering changes in detail in the use zoning proposals as submitted:

1. The plan, like the present Zoning Resolution, prohibits in residence districts all uses not specifically permitted. With this there was no disagreement in the subcommittee since the limited number and kind of uses permitted are easily stated. However, the Plan, unlike the present Zoning Resolution, extends the scheme to all

districts, prohibiting in every district all uses not specifically permitted therein. The present Zoning Resolution follows the opposite approach, permitting in every district, other than a residence district, all uses not specifically prohibited therein. There was substantial disagreement in the sub-committee as to this feature of the Plan both in principle and in detail. In principle, the question was whether the specification of permitted uses (admittedly incomplete) created definiteness at the cost of simplicity. A further question was whether past experience with the present Zoning Resolution indicated a need for such a change. In detail, concern was expressed that unintended exclusions might result, as, for example, a book and stationery store (Group 6) might be prohibited from selling toys and gifts (Group 7) in RRA (restricted Residence Retail) districts. There are numerous similar situations. A majority of the sub-committee, however, were willing to accept the consultants' approach, particularly as the other approach would require a time-consuming redrafting of a large part of the proposal.

2. In some instances the sub-committee also questioned whether the listing of specific permitted uses in the various use groups was in conformity with sound principles of planning. For example we found it difficult to understand the basis for excluding in an RRA district an optometrist but permitting watch repairs, for excluding a bank but permitting an office building, for excluding a gift shop but permitting a florist, for excluding a toy store but permitting a variety store, for excluding a telegraph office but permitting a telephone exchange, for excluding a clothing store but permitting a dry goods store, for excluding an art gallery but permitting a cabaret. These questions, however, were regarded as matters of detail, readily amendable, and not of the essence of the Plan.

3. We suggest that incinerators be recognized as "accessory uses" to residences only when located within the residence building (section 602.7).

4. Use group 5, a group of non-residential uses permitted in most residential (RB) areas, includes "philanthropic institutions, except buildings used exclusively for office purposes" (section 505). We believe "exclusively" should be replaced by something less absolute such as "more than incidentally" or "primarily." Also the same modified exception should be added to "philanthropic institutions" including residential accommodations in use group 2 (section 502), a group of types of residence allowed in RB districts. Philanthropic institutions used exclusively for office purposes should be barred from these districts but the regulation becomes meaningless if it can be circumvented by the inclusion of one residential apartment in the building. Such circumvention would be avoided by barring from these residence districts philanthropic institutions used "more than incidentally" or "primarily" for office purposes.

5. We suggest the addition to group 5 of consulates and other offices of representatives of foreign governments, as appropriate and unobjectionable for all districts including residence districts except the most restricted (RA).

6. The definition of "hotel" in section 620 is "a building, or any part of a building, which contains living and sleeping accommodations for transient occupancy, and has a common entrance or entrances." This would seem to include apartment hotels and rooming houses used primarily for permanent occupancy but occasionally or partially for transients. Since hotels are excluded from all residence districts and since we think that apartment hotels and rooming houses should be permitted in some residence districts (though excluded from the most restricted), we suggest the definition of a hotel be changed to "a building (a) containing living and sleeping accommodations more than half of which are available for transient occupancy and (b) having a common entrance or entrances."

7. Use group 4, the only use group permitted in all types of districts, including the most restricted residential districts, includes without limitation "Community cen-

ters" (section 504). We believe such centers in this category should be limited to those primarily serving the immediate neighborhood.

8. Also included in use group 4 are "public parks and playgrounds." To keep this inclusion from bringing crowds into the most restricted residential areas we suggest a more limited listing such as "public parks and playgrounds not including grandstands and special acommodations for spectators." The others could be included in group 5, allowed in the less restricted residential districts.

9. We suggest removing courthouses from use group 5, where their inclusion would permit them to be built as a matter of right in most residence (RB and RM) districts, and their transfer to group 6, which would exclude them from residence districts but permit them in all other districts, including residence retail districts. Residence retail districts are so widely mapped that this restriction should not be burdensome.

10. In RRB districts, designed to return gradually to residence use those parts of the long commercial districts which have been moderately developed with shops but are not suitable for permanent shopping centers, it is proposed to limit new shopping facilities to buildings with not more than 2000 square feet of floor area (section 242.11). We think this could safely be reduced to 1500 square feet, thus discouraging substantial new shopping development and at the same time permitting present owners some profitable use of their property. Consideration might also be given to limiting new retail uses to lots adjacent to or within a short distance of lots so used already, so as to prevent further blighting of residence blocks by a scattering of stores.

The sub-committee was sharply divided on the wisdom of the principle of the RRB district as well as on the appropriate method of effectuating the principle. There was also criticism of the mapping of some RRB districts where, as on Mermaid Avenue in the Coney Island Avenue section of Brooklyn, where the Avenue is chopped into short alternating RRB (transitional) and RRC (residence retail) districts.

11. Because of the noise, consideration should be given to transferring bowling alleys from use group 8 (section 508), permissible in all except the most restricted local shopping centers, to the more general list of amusements in use group 10 (section 510), permissible only in commercial and manufacturing districts. However, since bowling is a popular and healthful diversion, alleys with special noiseproofing arrangements and not connected with the sale of alcoholic beverages might be left in group 8, with other enclosed alleys transferred to group 10. The alcoholic beverage restriction might well be applied also to billiard parlors and pool halls as listed in group 8, with others permitted in group 10.

12. The proposed rezoning creates a special type of commercial district, CD, where filling stations and other automotive service establishments and a number of only moderately objectionable but somewhat blighting commercial and manufacturing pursuits (group 13) are to be permitted as a matter of right, while excluded from nearly all other commercial districts (section 513). At the present time many of these establishments are operating in business and commercial areas through variances granted by the Board of Standards and Appeals subject to more or less standard conditions to safeguard the neighborhood. We are concerned that these protective conditions may be lost, both at existing gasoline stations and at those which could be built, as of right, in the future. We recommend that some of the Board of Standards' conditions be written into the Zoning Resolution.

13. The proposed rezoning restricts airports to CD, CM and M districts, that is, industrial and the least restricted commercial districts (sections 513 and 1652.-42). This is so even when—as in all cases except private fields for passenger planes only—they require special approval in each case from the City Planning Commission.

While we agree that airports should not be permitted in the most restricted residence districts, and perhaps not in any residence districts, we believe they should be permitted with the Commission's specific approval in more kinds of districts than is proposed. An airport may properly be located in a part of the city which it would be appropriate to protect from heavy industry, filling stations and the like, and all the commercial uses would seem to be appropriate neighbors for airports.

14. In any case, we believe transient hotels (use group 3) should always be permitted as a matter of right in the immediate neighborhood of airports, whereas the present proposal would exclude them because of their residence character if the airport were located in any manufacturing district except the most restricted. This could be handled by a special exception.

15. As an addition to the desirable sign regulations proposed we recommend that roof signs be prohibited in residence (R), residence retail (RR) and restricted commercial (CA) districts.

16. As an obviously desirable innovation not included in the rezoning report we recommend that the facades of all future buildings fronting on a major civic center, like the one around City Hall and the one in downtown Brooklyn, as mapped by the City Planning Commission, require the approval of the city's Art Commission. This may require an amendment of the City Charter.

17. We believe the proposed Resolution would be improved and made much more widely acceptable if a new type of restricted residence district (RA3) were added in which apartment buildings would be excluded but one and two family row houses and garden apartments would be permitted. Many people who cannot afford the one-family detached residences of RA1 and RA2 districts still do not want apartment houses as neighbors and are entitled to the same protection as residents of wealthier communities.

Parking and Loading

Required Provision for Parking and Loading. A most important adjunct to the use provisions of the new plan, taking up a substantial part of the text of the proposed Resolution, is a detailed set of provisions as to space required and permitted for off-street parking and loading, and special inducements to the provision of such space where it would be helpful. In our own rezoning report of 1949 we recommended that all future buildings creating a need for parking or loading be required to provide it on some reasonable formula, but we did not venture to suggest what the formula should be. The Harrison, Ballard and Allen report sets up such requirements in detail, on the basis of careful and extensive research, not only for new buildings but, as to loading, for certain existing buildings where the need is pressing and compliance seems within reason (articles 10 and 11 and the use tables for all districts). We hail the result as one of the most constructive contributions of the report. It seems possible that it will be largely in effect, at least as to new buildings, before the rezoning as a whole is adopted, for the basic parking provisions were put in the present Zoning Resolution last year with the aid of the city's consultants and many of the loading requirements, including some for retail stores and offices, have recently been put before the public in two proposed amendments by the City Planning Commission.

Maximum Parking Space. While requiring parking space for most large new buildings, the Plan properly also places some maximum limits, recognizing that an excessive number of cars should not be encouraged. Residences in residence districts are permitted from one to three parking spaces per family, depending on the size of the building (section 1011.10), and in other districts the number of parking spaces on a block, including commercial garage spaces, is limited to 500 or 1000 within any 500 feet unless the Traffic Department certifies that additional spaces will not create serious traffic congestion (section 1035). In establishing the requirements for different districts the Plan also

properly recognizes that more spaces should be required in outlying areas where cars are more necessary and less obstructive and actually are more in use, and exempts entirely small residence buildings in congested districts where cars should be discouraged (section 1036.21).

Changes Recommended. 1. While we favor the proposed maximum limits on parking spaces in general, we can see no point in limiting to three the number of cars that can be kept on a large single-family lot in an uncongested part of the city (section 1011.10), It would be easy to work out a suitable exception for this case.

2. In order to discourage unnecessary parking spaces in multiple dwellings the plan proposes to limit to 25 per cent the accommodations in such buildings which can be rented out for periods of a month or more to persons not tenants in the building (section 1034.11). We favor raising this limitation to 50 per cent, subject to the present and proposed requirement that any tenant who applies must be given a space within 30 days if there are any spaces not occupied by tenants. With off-street parking so greatly needed, we do not want to see available space going to waste.

3. While we favor making parking space requirements less severe in congested districts, we do not think this principle should be applied, as it is in the proposed plan, to off-street loading facilities. Parking in congested districts may be avoided by not owning or keeping cars there, but the need for loading space is created by the character of the establishment without much regard to the surrounding congestion, and congestion makes it more imperative to do the loading and unloading off the street. We urge therefore that the off-street loading requirements of article 11 be made at least as severe in congested districts as elsewhere.

4. Owners of existing buildings for which off-street loading facilities are to be required are given a five-year grace period to comply (section 1122), but there are likely to be special situations in which compliance within that time would work an undue hardship. We recommend that the Board of Standards and Appeals be given power in such cases to extend the time for compliance subject to appropriate conditions and limitations. The proposed Resolution already properly gives the Board the power to vary the requirements (section 1651.44), and this permission also should include the right to impose appropriate conditions (see item 15 under "Administrative Provisions").

5. A word of caution, without specific recommendation, in regard to parking. We believe all-day parking, even off the street, should not be in any way encouraged in congested districts and those who increase congestion by driving to work should be induced if possible to come by subway, bus or train. Therefore, now and in the future, parking requirements should be based on the needs for short-time parking and not at all on all-day use. We know that the drafters of the proposed rezoning have had this principle in mind to a considerable extent.

Bulk Zoning

The sub-committee was unable to undertake careful and extensive research to test the practical application of the bulk zoning principles set forth in the plan. We assume that responsible architectural, engineering and real estate associations will do so. In the absence of any proof that the principles are impracticable in particular instances, the sub-committee after careful consideration is of the opinion that the new concepts and ingenious devices employed in the Plan represent in general an important and constructive change from our present more complicated and out-moded method of height and area district zoning.

Relation to Population. One of the major merits of the rezoning plan is that it bears a reasonable relation to the actual requirements of the city. The present Zoning Resolution would permit some 70 million people to live in residence districts and in addition permit residences everywhere else in the city. The bulk restrictions of the proposed substitute would permit only about 12 million people to live in residence

and residence retail districts, although these districts will comprise a much larger part of the city than the present residence districts, and in addition will prohibit future residences in heavy industrial districts. The consultants who drew the report estimate the maximum future population of the city at 8,600,000. In other words the rezoning would provide for the actual population in protected residence and associated districts with only a reasonable leeway for choice of location and without permitting the extremes of local congestion now possible.

Floor Area Ratio. The primary bulk control of the rezoning is the permitted ratio of floor area to the area of the lot. This replaces a combination of height and area limitations in the present Zoning Resolutions and in general permits a choice between height and lot coverage, though in most cases there will still be limitations on the amount of the lot which can be used for building. This new bulk control puts limits on density which are suitable for large developments as well as for the single lots for which the present zoning was written, whereas the present area and height restrictions make little sense when applied to modern building on large tracts.

Yards. Appropriate yard requirements (replacing the "yard" and "court" regulations of the present Resolution) are included along with the primary bulk control. If these are adopted the corresponding requirements of the Multiple Dwelling Law should also be modified to conform or else removed. Especially useful is the requirement of a 30-foot rear yard in all residence districts (and above the 23-foot level in residence retail districts), which gives buildings in such districts the equivalent of a 60-foot street in the rear for light and air (sections 220 and 240).

Light Angle. The present setback requirements, which result in an unattractive building design if the building uses the maximum space available, are replaced in the rezoning plan by a much more flexible averaged "angle of light obstruction." This angle is the angle made at the center of the street or the rear lot line between the horizontal plane at ground level and a plane which just clears the top of the building. This angle is regulated for all districts and is allowed to be steeper in the districts of greatest density. It is also allowed to be averaged, with certain restrictions, for different parts of a building. This will permit much greater latitude to the ingenuity of the architect and at the same time in most situations give at least as good access to light as the present setback regulations, often better.

Setback Controls in Residential Districts. In one-family residential districts (RA) the schools, churches and other non-residential buildings allowed are kept from encroaching too closely on dwelling houses by a special rule that a 45 degree angle from the center of the street or from any side or rear lot line of the non-residential building must clear the building at every point (section 225.10). In the two most restricted types of residence districts not confined to single-family dwellings (RB1 and RB2) there are similar restrictions, which there apply also to residences more than two or three stories and attic in height (sections 225.20 and 225.30). This seems to us a particularly useful device for preserving the amenities of residence districts and we suggest consideration of the possibilities of controlling the location of non-residential buildings on the lot in the public interest by varying the angles from different lot lines.

Light Access for Windows. An ingenious device new to New York zoning makes it possible to provide reasonably adequate light for all required windows, without the present detailed provisions as to size and location of yards and courts. Seven 10 degree angles are measured in an imaginary fan in a horizontal plane on each side of the perpendicular to the window sill at its center point and arcs at distances of 10, 20, 30, 40, 50, and 60 feet are measured from this point intersecting the angles to form sectors which are called "units of light access". If one of these sectors is completely free of obstruction as viewed from the point of the fan at the window, it may be counted as an available unit of light access in measuring the light requirements for the window. In different districts different numbers of units of light

access, some of them consecutive, are required. In some districts the required units include only those lying between 40 and 60 feet distant, in some only those between 20 and 40 feet, in still others only those between 10 and 20 feet. Naturally the windows requiring the more distant units of unobstructed light access are the more protected.

Usable Open Space. In all but the least restricted residence districts a given amount of "usable open space" is required (sections 228-228.32 and 780-782). This takes the place of the maximum percentage of lot coverage in certain area districts in the present Resolution. It is a more useful concept, because the space must be not merely unused but usable for specified desirable purposes such as lawns, gardens, recreational uses and clothes drying. Required parking and loading spaces are not included, but porches and in some cases balconies and usable roof space are included (sections 228.30 and 228.32).

Space Between Buildings. To keep buildings far enough apart in large developments in residence districts the new plan makes a special application of the principle of the angle of light obstruction, drawing an imaginary line 30 feet from each wall of a building and along that line applying the average light angle prescribed for the district in the direction away from the building in order to control the height and distance of other buildings (section 227.41). There are also certain special rules about the distance between buildings and the area to be allowed each building in the more restricted districts.

Changes Recommended. To evaluate the application of these several new instruments of bulk control in combination with each other in all the circumstances likely to present themselves would require very extensive and costly research, but we approve them all in principle and believe they should make it possible for zoning to meet the particular needs of each situation more exactly than has been possible in the past. Any errors in their original application can be corrected on the basis of experience. There are a very few changes that we would recommend at this time:

1. In single-family residence (RA) districts the rezoning plan prescribes front yards at least 15 feet in depth (section 220). We think this could reasonably be increased to 20 feet.

2. In applying the angle of light obstruction there is a salutary provision (section 743.13) that when angles less than the average angle required are averaged with greater angles, the street frontage of each part of the building for which the smaller angle is used must be at least 20 feet. This means that between towers there must always be a slot at least 20 feet wide. This seems to us satisfactory if the depth of the building away from the street is no more than 40 feet. If the depth is greater we suggest a wider slot, in the ratio of one foot for each two of added depth, in order to let light through between towers.

3. In general the rezoning plan properly limits additions to buildings to those that will not result in a building out of conformity with the bulk regulations prescribed for the district or, if the building is already non-conforming, will not increase the non-conformity. However an exception is made (section 922.41) to allow additions to a building which is already non-conforming as to the angle of light restriction requirements if a part of the building including the addition would conform after the addition is made as well as before. This seems to us undesirable and inequitable. If the building were less objectionable to begin with so that considered as a whole it just barely conformed to the requirements, no addition would be permitted which would increase the average angle of light. To permit an addition in a worse building to make it still worse considered as a whole seems wholly unreasonable.

4. Some concern was expressed in the sub-committee that the proposed bulk zoning regulations might hamper seriously the continuance of construction of six-story apartment houses in districts where they are and would be permitted. It is therefore suggested that special attention be given to the practical application of the Plan to this type of construction.

Administrative Provisions

The Rezoning Plan keeps the general set-up of the present Resolution for its administration, with the Department of Housing and Buildings as the enforcing agency and with exceptions (called "special permits") or variances granted by the Board of Standards and Appeals or by the City Planning Commission according to whether the matter at issue is considered one of largely individual concern or general city planning interest (article 16). The Plan proposes some important changes, however. We approve of many of the administrative provisions but disapprove of some and make the following recommendations for changes:

1. There was considerable sentiment in the sub-committee for deletion of the last sentence of section 1611, which provides that the amended Resolution shall be regarded as remedial and shall be liberally construed to further its underlying purposes. The courts have held the Zoning Resolution to be in derogation of common law rights and therefore to be strictly construed.

2. Proposed section 1615 sets up a procedure by which the City Planning Commission may add uses overlooked in the original enumeration. This results from the fact that the new Resolution is stated positively instead of negatively as at present; that is, it lists all the things which may be done in each district instead of those which may not be done, whereas the present Resolution uses the positive approach only in the case of residence districts. It is conceded that the attempt to list all possible uses may be unsuccessful and therefore a simple procedure for adding new ones without going through the whole procedure for a zoning amendment is proposed by the Plan. This seems to us of doubtful wisdom as well as doubtful legality, since each such addition would be in effect a zoning amendment. We suggest instead that when a use is desired which is not listed, the Board of Standards and Appeals be empowered to classify it in the particular instance with similar uses and to give permission for its use in an appropriate district accordingly, subject to any conditions it may think desirable for the protection of the public in accordance with the general character of the district concerned. A finding should be required that the new use presents no greater danger or nuisance than other uses permitted in the same district. Copies of such rulings should be filed by the Board of Standards and Appeals with the City Planning Commission, so that if the new use seems immediately worthy of attention, it can be added to the appropriate use group by the ordinary process of zoning amendment.

3. If the proposed procedure should be kept, however, it should at least be modified in one particular. Subdivision d limits the addition of a new use to cases where the use "does not create any danger to health and safety". This is obviously too strong. We suggest "any greater danger to health and safety than other uses in the use group to which it is assigned."

4. Section 1622 says that "the provisions of the Administrative Code of the City of New York shall control the issuance of building permits." This is too limited. We suggest omitting the word "building."

5. Section 1623 says that "upon written request by the owner, the Department of Housing and Buildings shall inspect any building, other structure or tract of land existing at the time of passage of this amended Resolution, and shall issue a certificate of occupancy therefor . . ." This would seem to mandate a certificate of occupancy even if one is not justified. The sentence needs to be reworded.

6. Section 1632.12 provides for notice by posters of proposed zoning amendments, in addition to the usual publication in the City Record. We believe the poster notice may often be ineffective in reaching the people concerned and recommend notice by mail to each person on the tax roll whose property is within the area deemed affected by the change, such notification to be regarded as supplementary to the legal notice in the City Record. An exception could be made to this requirement, because of the trouble and expense involved, if 200 lots or more were involved. In such cases the matter would be almost sure to become known anyway and posters might be sufficient as notice supplementary to the legal notice in the City Record.

7. Section 1632.13 provides for notice to local organizations "to the extent practicable." We suggest that the provision be omitted and that, as a matter of City Planning Commission practice, any organization which registers with the City Planning Commission as interested in zoning amendments be put on a mailing list and notified of all amendments affecting the area in which it indicates an interest. Reregistration annually might be required to prevent accumulation of dead wood on the list. If the section remains in its present form, "may" could be construed as "must" and amendments might thereby be voided and needless litigation and procedural red tape created for the city and individual taxpayers.

8. Section 1633.11, permitting taxpayers to petition for zoning amendments at any time during the year, is desirable but requires a charter amendment before it can be adopted. The charter amendment could include the other main points of the amendment procedure suggested.

9. Section 1633.12 provides for a petition for a zoning amendment by either the owners of 50 per cent of the land in an area or the householders of 50 per cent of the dwelling units in an area. We approve the principle of allowing householders to petition but believe the particular procedure given would be hard to administer. It ought to be sufficient to allow the householders of 100 dwelling units to petition regardless of the size of the area affected. A minority of the sub-committee thought householders should not be allowed to petition unless they are also property owners.

10. Sections 1633.22 and 1633.23 require notice by poster and also by registered mail with return receipt requested when a zoning amendment is requested by petition. We believe, as stated above, that the poster requirement should be omitted as generally ineffectual and an unnecessary expense. We believe also that the "return receipt requested" is an unnecessary expense and precaution.

11. The section numbered 1632.24 (apparently in error for 1633.24) should, we think, be amended to provide that proof of compliance with the requirements shall be filed with the City Planning Commission in such form as the Commission shall prescribe. The text requires such proof to be signed by the "signers of the petition", who may number 100 or more persons. Such a requirement would be impracticable and unnecessary.

12. Section 1634.10 puts a desirable restraint on spot zoning by prohibiting zoning map changes for an area less than 10,000 square feet except to make the zoning the same as for an adjoining area or to permit small neighborhood shopping by change to a residence retail district. Though this rule could be overridden by a zoning amendment at any time, such an amendment would draw attention to the fact that spot zoning was being proposed and would require the concurrence or acquiescense of the Board of Estimate. We recommend the inclusion of another exception, namely, that an area less than 10,000 square feet may be rezoned if bounded wholly by streets or public ways, a case which often occurs when three streets form a triangle. We recommend, furthermore, the addition of a statement that it is not to be assumed as a matter of legislative construction that there is no improper spot zoning involving more than 10,000 square feet. The possibility of having different limits for different types of districts might well be explored.

13. Section 1634.20 is a complicated restriction on rezoning changes in an RB district affecting two blocks or less. We question whether it is important to keep it.

14. Section 1641 continues the present power of the Board of Standards and Appeals to grant variances "where there are practical difficulties or unnecessary hardships". This power has been interpreted to apply only when application is made by an owner who had the property when the regulation was enacted or his heirs, on the theory that anyone who bought the property must have known what he was doing and accepted the regulation. It does not seem to us reasonable that different conditions should apply to the same property merely because of the conditions of ownership. We recommend, therefore, that a sentence be added to make it clear that the practical difficulty or unnecessary hardship is that which inheres to the development

of the building or the land regardless of ownership.

15. Sections 1651-1651.60 provide for exceptions, "special permits", by the Board of Standards and Appeals. In every such case we believe the Board should have power to impose appropriate conditions which will safeguard the character of the district. We recommend, therefore, that this right be stated in the inclusive introductory section, 1651, and omitted in those of the following sections where it is now included. We should like to see something added to make it clear, instead of merely implied, that such conditions should also protect the neighborhood against unsightliness. Where a special privilege is granted, this is a reasonable obligation to ask in return.

16. Some of the powers delegated to the Board of Standards and Appeals by Sections 1650-1651.60 are predicated upon certain findings which the Board must make as a condition precedent to the grant of a special permit. We are of the opinion that these provisions are vague in some cases and insufficient or unnecessary in others. For example:

(a) Section 1651.15.b permits the Board to grant special permits for alterations and additional construction of buildings nonconforming as to bulk. However, if this will result in an increase of more than fifty dwelling units in a residential building, the Board of Education must certify first that the school facilities serving the area are adequate to meet the increased school population. The sub-committee questioned the use of the Zoning Resolution to restrict dwelling units because of possible lack of school facilities, especially since a new building could be constructed next door to contain 200 family units without regard to the adequacy of school facilities.

(b) Requirement of a finding that "no other site is available" (Sections 1651.20 and 1651.31) is vague and needs to be qualified. Conceivably another site might be "available" but only one far less suitable or one for which a fantastically exorbitant price would have to be paid.

(c) Requirement of a finding (section 1651.31.a) that "it is not possible to serve such area from a facility located in a nearby district where such uses are permitted as of right", appears too drastic. Conceivably it may be "possible" but not practicable to do so.

(d) Requirement of a finding that "the facility is needed to serve the needs of the surrounding area" likewise seems too drastic and not quite the appropriate finding. What "need" is referred to? Would the existence of one similar facility, in the case of a theater (Section 1651.33) or a filling station (Section 1651.34) or a commercial parking garage or lot (Section 1651.35) indicate there was no need for another? Conceivably the existing facility, because of its poor location or mismanagement or unattractive appearance, might be operating at half capacity. Would this indicate a lack of need for a facility that would be well-located, well-managed and attractively maintained?

(e) Requirement of a finding (section 1651.41), prerequisite to the grant of a special permit to substitute for required off-street parking space alternative off-street space deemed by the Board to be suitable and adequate to prevent the creation of serious traffic congestion by parking along the street, that the required accessory off-street parking spaces cannot be reasonably provided "because of the unusual shape of a zoning lot or the structural features of a building" is both vague and too limited. It would appear more satisfactory to permit the Board to grant such special permits when the required spaces cannot reasonably be provided for any reason.

(f) The exemption provided for in section 1651.42 is too broad. We recommend that the exemption of the owner of a single one-family detached residence apply only upon evidence that no resident of the dwelling owns an automobile; that such special permits shall be for temporary terms of not more than two years, which shall not be extended except on presentation of similar evidence; and that such permits shall terminate within 30 days if a resident becomes the owner of an automobile.

17. Certain suggestions merely involving phraseology have been passed on to the City Planning Commission staff and are not repeated here.

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Committee on Local Candidates: George McKinley, chairman.

Committee on Legislation: Walter Frank, chairman. Sub-committees on Civil Liberties, Civil Service, Consumer Problems, Courts, Education, Election Law, Housing and Buildings, Labor, Mortgages and Real Property, Public Utilities, State and City Government, Taxation and Finance, Welfare and Health.

Committee on Fiscal Affairs: Albert Pleydell, chairman. Has just issued a report with recommendations on city budgetary procedure, entitled "A Performance Budget for New York City".

Committee on City Affairs: Samuel D. Smoleff, chairman. Makes studies of special city problems and issues reports from time to time.

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